

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 07-0461V

Filed: 13 September 2010

* * * * *
BONNIE JEAN OLSON,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.
* * * * *

Decision on Stipulation of the Parties;
Trivalent Influenza; Guillain-Barré Syndrome

Michael Andrew London, Esq., Douglas & London, P.C., New York City, New York, for Petitioner;
Lisa Ann Watts, Esq., United States Department of Justice, Washington, District of Columbia, for Respondent.

UNPUBLISHED DECISION¹

ABELL, Special Master.

On 12 August 2010, the parties filed a joint stipulation addressing the alleged vaccine-related injuries of Petitioner, Bonnie Jean Olson, which the Court accepts as reasonable, just and proper, with minor emendations, (in brackets), and which states as follows:

1. On 28 June 2007, Bonnie Jean Olson (“Petitioner”) filed a Petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to 34, as amended (the “Vaccine Program”). The Petition seeks compensation for injuries allegedly

¹ Petitioner is reminded that, pursuant to 42 U.S.C. § 300aa-12(d)(4) and Vaccine Rule 18(b), a petitioner has 14 days from the date of this ruling within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" may be made available to the public per the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

related to Petitioner's receipt of the [trivalent] influenza vaccine, which vaccine is included on the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3(a).

2. Petitioner received the flu immunization on 9 October 2001.

3. The vaccine was administered within the United States.

4. Petitioner alleges that within two weeks of vaccination, she had the onset of numbness and tingling in her arms and legs. She was hospitalized on 26 October 2001, and eventually diagnosed with Guillain-Barré Syndrome ("GBS"). Petitioner alleges that her GBS was caused-in-fact by receipt of the influenza vaccine. Petitioner further alleges that she experienced residual effects of her GBS (including limited mobility, pain, and numbness) for more than six months.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on her behalf as a result of her condition.

6. Respondent denies that Petitioner's claimed injury was caused by the influenza vaccine, and denies that her current disabilities are sequelae of her alleged injury.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in Paragraph 8 of this [Decision].

8. As soon as practicable after an entry of judgment reflecting [this Decision], and after Petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services [shall] issue the following compensation payments:

a. A lump sum of **\$35,909.77** in the form of a check payable jointly to Petitioner and: **State of New Hampshire Department of Health and Human Services, Office of Operations Support, Attention: Debra Beaulieu, 129 Pleasant Street, Concord, New Hampshire, 03301-3857**, for reimbursement of New Hampshire's Medicaid expenses; and

b. A lump sum of **\$319,513.04** in the form of a check payable to Petitioner, representing compensation for all remaining elements of compensation under 42 U.S.C. § 300aa-15(a) to which Petitioner would be entitled.

9. As soon as practicable after the entry of judgment on entitlement in this case, and after Petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before [the Undersigned] to award reasonable attorneys' fees and costs incurred in proceeding upon this Petition.

10. Petitioner and her attorney represent that they have identified to Respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including State compensation programs, insurance policies, Federal or State

health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 *et seq.*)), or entities that provide health services on a pre-paid basis.

11. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this [Decision] [shall] be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorney's fees and litigation costs, and past unreimbursable expenses, the money provided pursuant to this [Decision] [shall] be used solely for the benefit of Petitioner, as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. In return for the payments described in paragraphs 8 and 9, Petitioner, in her individual capacity and on behalf of herself, her heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States of America the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 *et seq.*, on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of Petitioner resulting from, or alleged to have resulted from, the influenza vaccination administered on 9 October 2001, as alleged by Petitioner in a petition for vaccine compensation filed on or about 28 June 2007, in the United States Court of Federal Claims as petition No. 07-0461V.

14. If Petitioner should die prior to entry of judgment, [the parties' Stipulation] shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

15. [If the undersigned Special Master does not issue a Decision in complete conformity with the terms of the Stipulation between the parties, or in the event the Court of Federal Claims does not enter judgment in conformity with a decision that is in complete conformity with the terms of the Stipulation between the parties,] then the parties' settlement and their Stipulation shall be null and void at the sole discretion of either party.

16. This [Decision] expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this [Decision] may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

17. [The parties' Stipulation] shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the influenza vaccine caused Petitioner's injuries, to include GBS, or that her current disabilities are sequelae of her alleged vaccine injury.

18. All rights and obligations of Petitioner hereunder shall apply equally to Petitioner's heirs, executors, administrators, successors and/or assigns.

I find this conclusion reasonable, just and proper, and adopt these provisions as the Decision of this Court in awarding damages. Therefore, in the absence of the filing of a motion for review, filed pursuant to Vaccine Rule 23 within 30 days of this date, **the clerk shall forthwith enter judgment** in accordance herewith.

IT IS SO ORDERED.

s/ Richard B. Abell
Richard B. Abell
Special Master